

Bill No. CS for SB 2412

Barcode 150506

CHAMBER ACTION

Senate

House

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Senator Garcia moved the following amendment:

**Senate Amendment (with title amendment)**

On page 33, line 17, through  
page 40, line 31, delete those lines

and insert:

Section 19. Section 626.99175, Florida Statutes, is  
created to read:

626.99175 Life expectancy providers; registration  
required; denial, suspension, revocation.--

(1) After July 1, 2006, a person may not perform the  
functions of a life expectancy provider without first having  
registered as a life expectancy provider, except as provided  
in subsection (6).

(2) Application for registration as a life expectancy  
provider must be made to the office by the applicant on a form  
prescribed by the office, under oath and signed by the  
applicant. The application must be accompanied by a fee of  
\$500.

(3) A completed application shall be evidenced on a

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1 form and in a manner prescribed by the office and shall  
2 require the registered life expectancy provider to update such  
3 information and renew such registration as required by the  
4 office.

5 (4) In the application, the applicant must provide all  
6 of the following:

7 (a) The full name, age, residence address, and  
8 business address, and all occupations engaged in by the  
9 applicant during the 5 years preceding the date of the  
10 application.

11 (b) A copy of the applicant's basic organizational  
12 documents, if any, including the articles of incorporation,  
13 articles of association, partnership agreement, trust  
14 agreement, or other similar documents, together with all  
15 amendments to such documents.

16 (c) Copies of all bylaws, rules, regulations, or  
17 similar documents regulating the conduct of the applicant's  
18 internal affairs.

19 (d) A list showing the name, business and residence  
20 addresses, and official position of each individual who is  
21 responsible for conduct of the applicant's affairs, including,  
22 but not limited to, any member of the board of directors,  
23 board of trustees, executive committee, or other governing  
24 board or committee and any other person or entity owning or  
25 having the right to acquire 10 percent or more of the voting  
26 securities of the applicant, and any person performing life  
27 expectancies by the applicant.

28 (e) A sworn biographical statement on forms supplied  
29 by the office with respect to each individual identified under  
30 paragraph (d), including whether such individual has been  
31 associated with any other life expectancy provider or has

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1 performed any services for a person in the business of  
2 viatical settlements.

3 (f) A sworn statement of any criminal and civil  
4 actions pending or final against the registrant or any  
5 individual identified under paragraph (d):

6 (g) A general description of the following policies  
7 and procedures covering all life expectancy determination  
8 criteria and protocols:

9 1. The plan or plans of policies and procedures used  
10 to determine life expectancies.

11 2. A description of the training, including continuing  
12 training, of the individuals who determine life expectancies.

13 3. A description of how the life expectancy provider  
14 updates its manuals, underwriting guides, mortality tables,  
15 and other reference works and ensures that the provider bases  
16 its determination of life expectancies on current data.

17 (h) A plan for assuring confidentiality of personal,  
18 medical, and financial information in accordance with federal  
19 and state laws.

20 (i) An anti-fraud plan as required pursuant to s.  
21 626.99278.

22 (j) A list of any agreements, contracts, or any other  
23 arrangement to provide life expectancies to a viatical  
24 settlement provider, viatical settlement broker, or any other  
25 person in the business of viatical settlements in connection  
26 with any viatical settlement contract or viatical settlement  
27 investment.

28 (5) As part of the application, and on or before March  
29 1 of every 3 years thereafter, a registered life expectancy  
30 provider shall file with the office an audit of all life  
31 expectancies by the life expectancy provider for the 5

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1 calendar years immediately preceding such audit, which audit  
2 shall be conducted and certified by a nationally recognized  
3 actuarial firm and shall include only the following:

4       (a) A mortality table.

5       (b) The number, percentage, and an actual-to-expected  
6 ratio of life expectancies in the following categories: life  
7 expectancies of less than 24 months, life expectancies of 25  
8 months to 48 months, life expectancies of 49 months to 72  
9 months, life expectancies of 73 months to 108 months, life  
10 expectancies of 109 months to 144 months, life expectancies of  
11 145 months to 180 months, and life expectancies of more than  
12 180 months.

13       (6) The life expectancy provider who is a subsidiary  
14 or affiliate of an insurance company licensed in this state  
15 shall be deemed to meet the registration requirements of this  
16 section and may provide life expectancies or operate as a life  
17 expectancy provider pursuant to this act.

18       (7) No viatical settlement broker, viatical settlement  
19 provider, or insurance agent in the business of viatical  
20 settlements in this state shall directly or indirectly own or  
21 be an officer, director, or employee of a life expectancy  
22 provider.

23       (8) Each registered life expectancy provider shall  
24 provide the office, as applicable, at least 30 days' advance  
25 notice of any change in the registrant's name, residence  
26 address, principal business address, or mailing address.

27       (9) A person required to be registered by this section  
28 shall for 5 years retain copies of all life expectancies and  
29 supporting documents and medical records unless those personal  
30 medical records are subject to different retention or  
31 destruction requirements of a federal or state personal health

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1 information law.

2 (10) An application for life expectancy provider  
3 registration shall be approved or denied by the commissioner  
4 within 60 calendar days following receipt of a completed  
5 application by the commissioner. The office shall notify the  
6 applicant that the application is complete. A completed  
7 application that is not approved or denied in 60 calendar days  
8 following its receipt shall be deemed approved.

9 (11) The office may, in its discretion, deny the  
10 application for a life expectancy provider registration or  
11 suspend, revoke, or refuse to renew or continue the  
12 registration of a life expectancy provider if the office  
13 finds:

14 (a) Any cause for which registration could have been  
15 refused had it then existed and been known to the office;

16 (b) A violation of any provision of this code or of  
17 any other law applicable to the applicant or registrant;

18 (c) A violation of any lawful order or rule of the  
19 department, commission, or office; or

20 (d) That the applicant or registrant:

21 1. Has been found guilty of or pled guilty or nolo  
22 contendere to a felony or a crime punishable by imprisonment  
23 of 1 year or more under the law of the United States of  
24 America or of any state thereof or under the law of any other  
25 country;

26 2. Has knowingly and willfully aided, assisted,  
27 procured, advised, or abetted any person in the violation of a  
28 provision of the insurance code or any order or rule of the  
29 department, commission, or office;

30 3. Has knowingly and with intent to defraud, provided  
31 a life expectancy that does not conform to an applicant's or

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1 registrant's general practice;

2 4. Does not have a good business reputation or does  
3 not have experience, training, or education that qualifies the  
4 applicant or registrant to conduct the business of a life  
5 expectancy provider; or

6 5. Has demonstrated a lack of fitness or  
7 trustworthiness to engage in the business of issuing life  
8 expectancies.

9 (12) The office may, in lieu of or in addition to any  
10 suspension or revocation, assess an administrative fine not to  
11 exceed \$2,500 for each nonwillful violation or \$10,000 for  
12 each willful violation by a registered life expectancy  
13 provider. The office may also place a registered life  
14 expectancy provider on probation for a period not to exceed 2  
15 years.

16 (13) It is a violation of this section for a person to  
17 represent, orally or in writing, that a life expectancy  
18 provider's registration pursuant to this act is in any way a  
19 recommendation or approval of the entity or means that the  
20 qualifications or abilities have in any way been approved of.

21 Section 20. Section 626.9919, Florida Statutes, is  
22 amended to read:

23 626.9919 Notice of change of licensee or registrant's  
24 address or name.--Each viatical settlement provider licensee  
25 and registered life expectance provider, viatical settlement  
26 broker licensee, and viatical settlement sales agent licensee  
27 must provide the office ~~or department, as applicable,~~ at least  
28 30 days' advance notice of any change in the licensee's or  
29 registrant's name, residence address, principal business  
30 address, or mailing address.

31 Section 21. Section 626.992, Florida Statutes, is

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1 amended to read:

2           626.992 Use of licensed viatical settlement providers,  
3 viatical settlement ~~licensed~~ brokers, and registered life  
4 expectancy providers, ~~and sales agents~~ required.--

5           (1) A licensed viatical settlement provider may not  
6 use any person to perform the functions of a viatical  
7 settlement broker as defined in this act unless such person  
8 holds a current, valid life agent license and has appointed  
9 himself or herself in conformance with this chapter ~~as a~~  
10 viatical settlement broker. Salaried individuals employed by  
11 viatical settlement providers shall engage in viatical  
12 settlement broker activities only when accompanied by a  
13 viatical settlement broker who holds a current valid license  
14 issued under this act. A viatical settlement provider may not  
15 use any person to perform the functions of a viatical  
16 settlement sales agent unless the person holds a current,  
17 valid license as provided in subsection (4).

18           (2) A ~~licensed~~ viatical settlement broker may not use  
19 any person to perform the functions of a viatical settlement  
20 provider as defined in this act unless such person holds a  
21 current, valid license as a viatical settlement provider.

22           (3) After July 1, 2006, a person may not operate as a  
23 life expectancy provider unless such person is registered as a  
24 life expectancy provider pursuant to this act. A viatical  
25 settlement sales agent may not use any person to perform the  
26 functions of a viatical settlement broker unless such person  
27 holds a current, valid license as a viatical settlement  
28 broker.

29           (4) After July 1, 2006, a viatical settlement  
30 provider, viatical settlement broker, or any other person in  
31 the business of viatical settlements may not obtain life

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1 expectancies from a person who is not registered as a life  
 2 expectancy provider pursuant to this act. A person may not  
 3 ~~perform the functions of a viatical settlement sales agent~~  
 4 ~~unless licensed as a life agent as defined in s. 626.015 and~~  
 5 ~~as provided in this chapter.~~

6 Section 22. Subsections (1) and (2) of section  
 7 626.9921, Florida Statutes, are amended to read:

8 626.9921 Filing of forms; required procedures;  
 9 approval.--

10 (1) A viatical settlement contract form, ~~viatical~~  
 11 ~~settlement purchase agreement form~~, escrow form, or related  
 12 form may be used in this state only after the form has been  
 13 filed with the office and only after the form has been  
 14 approved by the office.

15 (2) The viatical settlement contract form, ~~viatical~~  
 16 ~~settlement purchase agreement form~~, escrow form, or related  
 17 form must be filed with the office at least 60 days before its  
 18 use. The form is considered approved on the 60th day after its  
 19 date of filing unless it has been previously disapproved by  
 20 the office. The office must disapprove a viatical settlement  
 21 contract form, ~~viatical settlement purchase agreement form~~,  
 22 escrow form, or related form that is unreasonable, contrary to  
 23 the public interest, discriminatory, ~~or~~ misleading, or unfair  
 24 to the viator ~~or the purchaser~~.

25 Section 23. Subsection (2) of section 626.9922,  
 26 Florida Statutes, is amended, and subsections (5), (6), and  
 27 (7) are added to said section, to read:

28 626.9922 Examination.--

29 (2) All accounts, books and records, documents, files,  
 30 contracts, and other information relating to all transactions  
 31 of viatical settlement contracts, life expectancies, or



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1 viatical settlement purchase agreements made before July 1,  
2 2005, must be maintained by the licensee for a period of at  
3 least 3 years after the death of the insured and must be  
4 available to the office or department for inspection during  
5 reasonable business hours.

6 (5) The office has jurisdiction over all viatical  
7 settlement purchase agreements made before July 1, 2005,  
8 including, but not limited to, the authority to examine  
9 persons in possession of records relating to viatical  
10 settlement purchase agreements made before July 1, 2005, and  
11 that authority set forth in s. 624.319.

12 (6) If the office makes the determination that a  
13 viatical settlement provider does not have the financial  
14 ability to perform its present or future obligations under the  
15 viatical settlement purchase agreements made before July 1,  
16 2005, the office shall make a referral to the United States  
17 Securities and Exchange Commission or the Office of Financial  
18 Regulation for further administrative action pursuant to s.  
19 517.191, including, but not limited to, the appointment of a  
20 receiver by the court.

21 (7) Subsections (1), (2), (3), and (4) apply to life  
22 expectancy providers providing life expectancies in the state  
23 and providing life expectancies to viatical settlement  
24 providers in the state, as if life expectancy providers were  
25 licensees.

26 Section 24. Section 626.99245, Florida Statutes, is  
27 amended to read:

28 626.99245 Conflict of regulation of viaticals.--

29 ~~(1) A viatical settlement provider who from this state~~  
30 ~~enters into a viatical settlement purchase agreement with a~~  
31 ~~purchaser who is a resident of another state that has enacted~~

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1 ~~statutes or adopted regulations governing viatical settlement~~  
2 ~~purchase agreements, shall be governed in the effectuation of~~  
3 ~~that viatical settlement purchase agreement by the statutes~~  
4 ~~and regulations of the purchaser's state of residence. If the~~  
5 ~~state in which the purchaser is a resident has not enacted~~  
6 ~~statutes or regulations governing viatical settlement purchase~~  
7 ~~agreements, the provider shall give the purchaser notice that~~  
8 ~~neither Florida nor his or her state regulates the transaction~~  
9 ~~upon which he or she is entering. For transactions in these~~  
10 ~~states, however, the viatical settlement provider is to~~  
11 ~~maintain all records required as if the transactions were~~  
12 ~~executed in Florida. However, the forms used in those states~~  
13 ~~need not be approved by the office.~~

14       ~~(1)(2)~~ A viatical settlement provider who from this  
15 state enters into a viatical settlement contract with a viator  
16 who is a resident of another state that has enacted statutes  
17 or adopted regulations governing viatical settlement contracts  
18 shall be governed in the effectuation of that viatical  
19 settlement contract by the statutes and regulations of the  
20 viator's state of residence. If the state in which the viator  
21 is a resident has not enacted statutes or regulations  
22 governing viatical settlement agreements, the provider shall  
23 give the viator notice that neither Florida nor his or her  
24 state regulates the transaction upon which he or she is  
25 entering. For transactions in those states, however, the  
26 viatical settlement provider is to maintain all records  
27 required as if the transactions were executed in Florida. The  
28 forms used in those states need not be approved by the office.

29       ~~(2)(3)~~ This section does not affect the requirement of  
30 ss. 626.9911~~(12)(5)~~ and 626.9912(1) that a viatical settlement  
31 provider doing business from this state must obtain a viatical

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1 settlement license from the office. As used in this  
 2 subsection, the term "doing business from this state" includes  
 3 effectuating viatical settlement contracts ~~and effectuating~~  
 4 ~~viatical settlement purchase agreements~~ from offices in this  
 5 state, regardless of the state of residence of the viator ~~or~~  
 6 ~~the viatical settlement purchaser.~~

7       ~~(4) The offer, sale, and purchase of viatical~~  
 8 ~~settlement contracts, and the regulation of viatical~~  
 9 ~~settlement providers shall be within the exclusive~~  
 10 ~~jurisdiction of the Office of Insurance Regulation under the~~  
 11 ~~provisions of this part.~~

12       Section 25. Section 626.9925, Florida Statutes, is  
 13 amended to read:

14       626.9925 Rules.--The commission may adopt rules to  
 15 administer this act, including rules establishing standards  
 16 for evaluating advertising by licensees; rules providing for  
 17 the collection of data, for disclosures to viators ~~or~~  
 18 ~~purchasers, and for the reporting of life expectancies and for~~  
 19 the registration of life expectancy providers; and rules  
 20 defining terms used in this act and prescribing recordkeeping  
 21 requirements relating to executed viatical settlement  
 22 contracts ~~and viatical settlement purchase agreements.~~

23       Section 26. Section 626.9926, Florida Statutes, is  
 24 amended to read:

25       626.9926 Rate regulation not authorized.--Nothing in  
 26 this act shall be construed to authorize the office or  
 27 department to directly or indirectly regulate the amount paid  
 28 as consideration for entry into a viatical settlement contract  
 29 ~~or viatical settlement purchase agreement.~~

30       Section 27. Subsection (1) of section 626.9927,  
 31 Florida Statutes, is amended to read:

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1           626.9927 Unfair trade practices; cease and desist;  
2 injunctions; civil remedy.--

3           (1) A violation of this act is an unfair trade  
4 practice under ss. 626.9521 and 626.9541 and is subject to the  
5 penalties provided in the insurance code. Part IX \* of this  
6 chapter, entitled Unfair Insurance Trade Practices, applies to  
7 a licensee under this act or a transaction subject to this act  
8 as if a viatical settlement contract ~~and a viatical settlement~~  
9 ~~purchase agreement~~ were an insurance policy.

10           Section 28. Paragraph (b) of subsection (1) of section  
11 626.99275, Florida Statutes, is amended, paragraph (d) is  
12 added to that subsection, and subsection (2) of that section  
13 is reenacted, to read:

14           626.99275 Prohibited practices; penalties.--

15           (1) It is unlawful for any person:

16           (b) To knowingly or with the intent to defraud, for  
17 the purpose of depriving another of property or for pecuniary  
18 gain, issue or use a pattern of false, misleading, or  
19 deceptive life expectancies. ~~In the solicitation or sale of a~~  
20 ~~viatical settlement purchase agreement:~~

21           1. ~~To employ any device, scheme, or artifice to~~  
22 ~~defraud;~~

23           2. ~~To obtain money or property by means of an untrue~~  
24 ~~statement of a material fact or by any omission to state a~~  
25 ~~material fact necessary in order to make the statements made,~~  
26 ~~in light of the circumstances under which they were made, not~~  
27 ~~misleading; or~~

28           3. ~~To engage in any transaction, practice, or course~~  
29 ~~of business which operates or would operate as a fraud or~~  
30 ~~deceit upon a person.~~

31           (d) To knowingly or intentionally facilitate the

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1 change of state of residency of a viator to avoid the  
2 provisions of this chapter.

3 (2) A person who violates any provision of this  
4 section commits:

5 (a) A felony of the third degree, punishable as  
6 provided in s. 775.082, s. 775.083, or s. 775.084, if the  
7 insurance policy involved is valued at any amount less than  
8 \$20,000.

9 (b) A felony of the second degree, punishable as  
10 provided in s. 775.082, s. 775.083, or s. 775.084, if the  
11 insurance policy involved is valued at \$20,000 or more, but  
12 less than \$100,000.

13 (c) A felony of the first degree, punishable as  
14 provided in s. 775.082, s. 775.083, or s. 775.084, if the  
15 insurance policy involved is valued at \$100,000 or more.

16 Section 29. Section 626.99278, Florida Statutes, is  
17 amended to read:

18 626.99278 Viatical provider anti-fraud plan.--Every  
19 licensed viatical settlement provider and registered life  
20 expectancy provider ~~viatical settlement broker~~ must adopt an  
21 anti-fraud plan and file it with the Division of Insurance  
22 Fraud of the department ~~on or before December 1, 2000~~. Each  
23 anti-fraud plan shall include:

24 (1) A description of the procedures for detecting and  
25 investigating possible fraudulent acts and procedures for  
26 resolving material inconsistencies between medical records and  
27 insurance applications.†

28 (2) A description of the procedures for the mandatory  
29 reporting of possible fraudulent insurance acts and prohibited  
30 practices set forth in s. 626.99275 to the Division of  
31 Insurance Fraud of the department.†

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1 (3) A description of the plan for anti-fraud education  
2 and training of its underwriters or other personnel. ~~7 and~~

3 (4) A written description or chart outlining the  
4 organizational arrangement of the anti-fraud personnel who are  
5 responsible for the investigation and reporting of possible  
6 fraudulent insurance acts, ~~7 and~~ for the investigation of  
7 ~~investigating~~ unresolved material inconsistencies between  
8 medical records and insurance applications.

9 (5) For viatical settlement providers, a description  
10 of the procedures used to perform initial and continuing  
11 review of the accuracy of life expectancies used in connection  
12 with a viatical settlement contract or viatical settleemnt  
13 investment.

14  
15 (Redesignate subsequent sections.)

16  
17  
18 ===== T I T L E A M E N D M E N T =====

19 And the title is amended as follows:

20 On page 3, lines 3-20, delete those lines

21  
22 and insert:

23 creating s. 626.99175, F.S.; requiring  
24 registration to operate as a life expectancy  
25 provider; providing registration for  
26 requirements; requiring certain application  
27 information; requiring registered life  
28 expectancy providers to periodically file  
29 audits with the office; providing audit  
30 requirements; authorizing certain subsidiaries  
31 of life expectancy providers to operate as a

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1 provider under certain circumstances;  
2 prohibiting certain providers, brokers, and  
3 agents from owning or being an officer,  
4 director, or employee of a life expectancy  
5 provider; requiring providers to provide the  
6 office with advance notice of certain changes;  
7 requiring providers to retain copies of certain  
8 information and documents; providing an  
9 exception; providing procedures for approval or  
10 denial of applications; specifying grounds for  
11 denial of an application; authorizing the  
12 office to assess administrative fines under  
13 certain circumstances; authorizing the office  
14 to place a provider on probation for a certain  
15 period; specifying certain activities  
16 violations; amending ss. 626.9919, 626.992, and  
17 626.9921, F.S., to conform; amending s.  
18 626.9922, F.S.; specifying office jurisdiction  
19 over certain viatical settlement purchase  
20 agreements; authorizing the office to refer  
21 certain cases to the United States Securities  
22 and Exchange Commission for administrative  
23 action under certain circumstances; providing  
24 application to life expectancy providers;  
25 amending ss. 626.99245, 626.9925, 626.9926, and  
26 626.9927, F.S., to conform; amending s.  
27 626.99275, F.S.; revising prohibited practices  
28 to apply to issuing life expectancies and  
29 change a viator's residency for certain  
30 purposes; providing a criminal penalty;  
31 amending s. 626.99278, F.S.; providing for

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1 application to registered life expectancy  
2 providers; requiring an anti-fraud plan to  
3 include a description of procedures used to  
4 perform life expectancy accuracy reviews;  
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